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*In the Supreme Court of Pennsylvania, in and for
the Eastern District.*

IN EQUITY.

JANUARY TERM, 1865. No. 24.

THE PHILADELPHIA & READING R. R. CO.
COMPLAINANTS,

vs.

ISAAC P. MORRIS,
DEFENDANT.

EXAMINER'S REPORT.

King & Baird, Printers, 607 Sansom Street, Philada.

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January Term, 1865, No. 24.

THE PHILADELPHIA AND READING RAILROAD COMPANY,
Complainants,

vs.

ISAAC P. MORRIS, *Defendant.*

Examiner's Report.

DEPOSITIONS OF WITNESSES produced, sworn or affirmed,
and examined before CHARLES H. T. COLLIS, *Exam-*
iner, appointed by the Court as per certificate hereto
attached, at his office, No. 522 Walnut street, in the
City of Philadelphia, on Tuesday, December 26,
1865, and subsequent days.

Respectfully submitted,
CHARLES H. T. COLLIS,
Examiner.

THE PHILADELPHIA AND READING RAILROAD COMPANY

vs.

ISAAC P. MORRIS.

TUESDAY, DECEMBER 26th, 1865.

Present—JAS. E. GOWEN, Esq., *for Plaintiff.*
GEO. W. BIDDLE, Esq., *for Defendant.*

Plaintiff gives in evidence from the Journal of the Senate of Pennsylvania, a copy of a certain bill, which passed the Senate on the 7th February, 1865, and on the 21st February, 1865, was returned to the Senate, the House of Representatives having concurred in the same; and which bill was presented to the Governor on the 23d February, 1865; and presents a printed copy of said bill. (See page 7 of printed bill and answer.)

Also the fact, from the same Journal, that the Senate adjourned on the first day of March, 1865, at 5 o'clock, P. M., and re-assembled on Tuesday, March 7, 1865, at 10 o'clock, A. M.

Also the fact, that the Senate was in session on the following days:

Thursday, February 23, 1865.

Friday, February 24, 1865, and then adjourned until Monday, February 27, 1865, at 8 o'clock, P. M., and met at that time.

Tuesday, February 28, 1865.

Wednesday, March 1, 1865, when they adjourned until Tuesday, March 7, 1865, at 10 o'clock, A. M., on which day they met, and were in session during the day.

Wednesday, March 8, 1865, when, as appears from the Journal of the Senate, the Secretary of the Commonwealth being introduced, presented a message from the Governor, returning with his objections bill No. 244, entitled "An Act authorizing the construction of a pier or wharf in the River Delaware," which was read as follows, viz.:

EXECUTIVE CHAMBER,
HARRISBURG, PA., March 7, 1865.

To the Senate and House of Representatives
Of the Commonwealth of Pennsylvania:

GENTLEMEN: I return to the Senate, in which it originated, bill, entitled "An Act authorizing the construction of a pier or wharf in the River Delaware," with my objections to the same.

It appears that the Reading Railroad Company and Mr. Morris respectively own land on the River Delaware. These properties are not adjoining; there is a narrow strip of land between them. The wharf line, at a point between these two properties, forms an entering angle, so that, if wharves perpendicular to the wharf line be extended to it on each of the properties, they will nearly form a triangle, leaving at the apex a very small opening. Under these circumstances, both parties applied to the Board of Wardens for a license to extend their wharves to the wharf line; license was granted to Mr. Morris and refused to the Reading Railroad Company. The Company appealed from the refusal of a license to them, and that appeal is still pending. The law gave them no appeal from the decision of the Board on the application of Mr. Morris. The present bill proposes to give the Reading Railroad Company the right to erect the wharf, as proposed by them, thus summarily deciding the appeal in their favor by a legislative act, and arresting the case (involving as it does important private interests) from the court of justice in which it is actually pending. I think this would be a dangerous and unjust course of proceeding, and therefore I cannot approve

this bill. At the same time, it appears to be a defect in the existing law, that no appeal is allowed when a license has been granted by the Board. I think that the Reading Railroad should be allowed to appeal from the grant of the license to Mr. Morris in this case, and that parties similarly situated should have the right of appeal from the grant of a license to owners of property in their vicinity. I recommend, therefore, the passage of a bill giving the right of appeal in such cases, and extending that right to the case of all licenses heretofore granted by the Board of Wardens, under which the wharf license has not been conferred, thus covering the case of Mr. Morris, who, I understand, has not yet extended his wharf. This right of appeal should be given to any owner of property in the vicinity of the proposed wharf, who may conceive that his interests are affected by the grant of the license appealed from. For these reasons I have withheld my signature from this bill

A. G. CURTIN.

Agreeably to the provisions of the Constitution, the Senate proceeded to the reconsideration of the bill referred to in the foregoing message.

And on the question,

"Shall the bill pass, notwithstanding the objection of the Governor?"

A motion was made by Mr. Ridgway and Mr. Nichols,

To postpone the question, together with the further consideration of the bill, for the present.

Which was agreed to.

Also Act of General Assembly, March 9, 1803, "to establish a Board of Wardens for the Port of Philadelphia and for the regulation of pilots and pilotages, and for other purposes therein mentioned;" and the other Acts of Assembly referred to in the 5th Sec. of the bill filed in this case.

Adjourned until Wednesday, January 3d, 1866, at 1 o'clock,
P. M.

WEDNESDAY, JANUARY 3d, 1866, 1 o'clock, P. M.

Met pursuant to adjournment.

Adjourned until January 10, 1866.

WEDNESDAY, JANUARY 10, 1866, 1 o'clock, P. M.

Met pursuant to adjournment.

Present—Messrs. GOWEN, SELLERS, and EXAMINER.

Adjourned until Wednesday, January 17, at 1 o'clock, P. M.

WEDNESDAY, JANUARY 17, 1866, 1 P. M.

Met pursuant to adjournment.

Present—Messrs. GOWEN, *for Plaintiff*, SELLERS, *for Defendant*, and EXAMINER.

Plaintiff gives in evidence

Deed George W. Ball and Charles H. Ball, trustees, to the Philadelphia and Reading Railroad. Recorded in Deed Book, City and County of Philadelphia, G. W. C., No. 36, p. 465, &c., for a lot or piece of ground in the District of Richmond.

Deed George T. Lewis and wife to Philadelphia and Reading Railroad, dated May 21, 1847. Recorded at Philadelphia, in Deed Book T. H., No. 88, p. 409.

[These two lots include the ground beginning at the northern terminus of complainant's property, and extending a considerable distance up the river.]

Deed Philadelphia and Reading Railroad to the District of Richmond, dated 30th April, 1849. Recorded in Deed Book G. W. C., No. 35, page 21. The property conveyed by this deed is described on page 11 of defendant's answer.

Agreement between Philadelphia and Reading Railroad Company and the District of Richmond, dated 28th December, 1850.

Certified copy of the petition of the Philadelphia and Reading Railroad Company, presented 24th May, 1864, to the Board of Wardens, for the license to construct a pier therein described, and a certified copy of the resolution of the Board thereon.

Copy of the petition of I. P. Morris, of the 6th June, 1864, to the Board of Wardens for license to build an addition to a pier, therein described, and the action of the board thereon. And also the petition of the Philadelphia and Reading Railroad Company to the Court of Quarter Sessions, praying the Court to order the Sheriff to appoint a jury to view the premises and report to the Court upon the propriety of granting the license applied for by the said Company.

Act of Assembly ratifying the agreement of December 28, 1850, between Philadelphia and Reading Railroad Company and District of Richmond, dated , 186 .

Adjourned until Wednesday, January 23d, 1866, at 1 o'clock, P. M.



JANUARY 23d, 1866, 1 o'clock, P. M.

Present—Messrs. SELLERS, GOWEN, and EXAMINER.

Defendant offers in evidence a certified copy of the proceedings in the Court of Common Pleas of the County of Phila-

adelphia, in 1755, whereby the estate of Wm. Ball, deceased, was parted and divided.

It is admitted, for the purpose of evidence in this cause, that the whole of the tract, described as No. 8 in the partition of the estate of Wm. Ball, was purchased by John R. Coates in 1831, and that the respondent acquired title to the southern half by a conveyance from the said Coates made on the 9th day of August, 1836, and recorded in Deed Book S. H. F., No. 4, page 353.

Defendant offers in evidence a deed of Levi Morris and wife to Isaac P. Morris, dated March 27, 1841, and recorded in Deed Book G. S., No. 25, p. 610, whereby the interest of Levi Morris in said property was vested in Isaac P. Morris.

It is admitted, for the purposes of evidence in this cause, that the said Levi and Isaac P. Morris engaged in business as iron founders and steam engine builders, shortly after the purchase of Coates, and on that site.

It is admitted, for the purposes of evidence in this cause, that the existing pier in front of the ground of the respondent was erected under lawful license issued by the Port Wardens.

It is admitted, for the purposes of evidence in this cause, that the complainants had purchased a large part of the whole of allotment number 9 in the partition of the estate of the said Ball, as alleged in the answer of respondent.

Defendant offers in evidence an ancient draft of the land belonging to the family of Wm. Ball.

Adjourned until Wednesday, January 31, at 1 o'clock, P. M.

WEDNESDAY, JANUARY 31, 1866, 1 o'clock, P. M.

Present—Messrs. BIDDLE, HANSON, and EXAMINER.

LEWIS TAWS, a witness on behalf of the defendant, being duly *sworn*, deposes and says:

Q. Are you a member of the firm of I. P. Morris, Town & Co.?

A. Yes.

Q. What business are they now in?

A. The manufacture of steam engines and machinery in general.

Q. Where is the place of business?

A. At the corner of York or Lehigh street and Richmond street, in the Nineteenth Ward.

Q. Part of the property is a pier, is it not?

A. Yes; known as I. P. Morris' wharf. Beach street runs through the property parallel with Richmond street. It is the property about which the present controversy is.

Q. How long has Isaac P. Morris carried on that business in that locality?

A. I don't know as I can recollect. The wharf was built in 1838 or '39.

Q. When was the first extension of the wharf made?

A. Well, I really can not say. I should think it must have been somewhere about 1842. It was a considerable time ago.

Q. Has Mr. Morris been carrying on business there ever since?

Yes, he has been carrying on business there for twenty-five years and upwards. The entire establishment was moved there at the close of 1846, and since that time it has been his exclusive place of business under the several firms with which he has been connected. All his manufacturing business has been carried on there since 1847.

Q. State the value of the real estate there.

A. The value of the real estate there belonging to Isaac P. Morris, for which the firm pays rent to him, is about \$104,000 or \$105,000.

Q. How is that \$104,000 made up? What is the value of the land alone?

A. Well, I can't say.

(Memorandum shown witness.)

I saw this memorandum made from the books of I. P. Morris, Town & Co. I have paid very little attention to the real estate. The real estate is charged at its original cost.

Q. What is its value at present as compared with its cost value?

A. I should say at least double.

Q. Are there not, in addition to the buildings and structures, a great deal of machinery which can not be conveniently moved from the place?

A. Yes, sir. They cost about \$8,000. There's a pair of shears and coal-bins, cupolas, ovens, curbs for pits, and railroad tracks.

Q. What would these last items, amounting to about \$8,000, be worth if you were compelled to remove them?

A. I should not suppose they would be worth more than from \$800 to \$1,000. They would be entirely destroyed, and could only be used as old materials.

Q. Is there not, in addition to the real estate and fixtures which you have just mentioned, a large amount of valuable tools and machinery in that establishment adapted to the present business?

A. Yes.

Q. Give us the value of them.

A. I will give you the value as placed upon our books, but their true value is far greater. Their value on the books is about \$140,000 to \$150,000. Their value at present rates is at least three times as great.

Q. What is your department of business in the firm?

A. I am constructing engineer, and made most of these tools. My business is exclusively connected with the ma-

chinery and the mechanical department of the business. I am a practical mechanic.

Q. How many hands have you employed for the last four or five years?

A. Probably two hundred and seventy-five daily; I should suppose that's the average—sometimes more, sometimes less. We have had as high as four hundred and fifty men previous to 1861. Since the war began have had great difficulty in obtaining competent hands. We have been doing a large business for fifteen years. Between 1846 and 1856 our business amounted to about \$3,000,000. I have been familiar with this neighborhood since 1836.

Q. Is there any wharf improvement on the Reading Railroad property or City property, north of Morris' property?

A. No, sir; there has not been for the last twenty years A glass-house originally stood there, but was removed. There has not not been any wharf improvement since I first knew the property.

Q. Are there any improvements of any kind there?

A. Nothing but a spar-maker's shed, which I should say was not worth more than \$250. There are no improvements of any kind in front of these properties, west or southwest.

Cross-examined.

I do not know what front the City property has.

Q. How far is it from the northern boundary of I. P. Morris' property to the last new wharf constructed by the railroad Company?

A. Looking from our pier, I should judge it was about two hundred feet.

Q. Was not there a third extension of your pier?

A. No, I think not. This is the second extension.

Q. Why do you say the real estate has doubled on the original price?

A. Because materials and labor have doubled in price, and because it has been filled up from the refuse matter of the establishment, and that filling up was not included in my cost charge.

Q. Are you conversant with the value of real estate in that part of the city?

A. No, sir, I am not.

Q. About how many tons of rails are laid in tracks over your property?

A. I cannot say; not to any great amount. Perhaps five or six, or may be ten, as a maximum.

Q. Do you know the value of old railroad iron per ton?

A. I suppose about \$55; but railroad iron forms a very small portion of this iron.

Q. In what way is the book value of the tools arrived at?

A. They were made and charged at cost price; at the end of each year ten per cent. is reduced from this value, until it reaches the price of old material. When I say they are now three times their original value, I mean it would cost that to replace them.

(Signed) LEWIS TAWS.

Sworn and subscribed before me this thirty-first day of January, A. D. 1866.

CHARLES H. T. COLLIS,
Examiner.



JOHN J. THOMPSON, a witness on behalf of the defendants, being duly *affirmed*, deposes and says:

Q. Are you now, and how long have you been connected in business with Isaac P. Morris, the defendant?

A. Since the 1st of February, 1846. I am now a partner, have been so since January, 1847.

Q. What department of business has been given to you?

A. The office, including to a great extent, the financial part of the business.

Q. What is the value on the books of the firm of the real estate of the concern, belonging to I. P. Morris?

A. The real estate itself don't stand on my books; but we

pay him rent on the valuation at the time the partnership was made, on \$100,670.23. There have been sundry charges against the real estate since, amounting to \$3,772.56, which are properly chargeable to him—therefore, the whole charge of the real estate is \$104,442.79. This includes the value of the ground, which cost I think about \$21,500, as near as I can recollect; I have no memorandum of it. The rest of the cost is improvements of various kinds, including buildings, pier extensions, and so on. This does not include the shears and other items, spoken of by Mr. Taws, and valued by him at \$8,000, nor does it include any of the stock, which belongs to the firm, and not to Mr. Morris exclusively. The extension of the pier was made in 1849 and '50, and not in 1842. None has been made since. This extension runs to within a very few feet of old warden's line.

(Signed) JOHN J. THOMPSON.

Affirmed and subscribed before me, this 31st day of January, A. D. 1866.

CHARLES H. T. COLLIS,
Examiner.

Adjourned until Wednesday, February 7, 1866, at 1 o'clock, P. M.



WEDNESDAY, FEBRUARY 7, 1866, 1 o'clock, P. M.

Met pursuant to adjournment.

Present—Messrs. SELLERS, GOWEN, and EXAMINER.

JAMES P. DAVIS, a witness on behalf of the defendant, being duly *sworn*, deposes and says :

I am the Surveyor and Regulator of the 6th Survey District of the City of Philadelphia. That district includes the 18th, 19th and part of the 23d wards.

Exhibit A. to the answer of the defendant, being shown

witness, and Exhibit B. to the answer of the defendant, being shown witness, he is asked the following question.

Q. Do the lines of the partition of the estate of Wm. Ball, deceased, conform to the lines of the public streets in that locality?

A. Objected to as irrelevant and as secondary evidence.

A. They do, very nearly. I speak particularly as to that portion at or near the locality of the property of I. P. Morris.

Q. Look at the lot indicated as No. 8, on the plan of the partition, and say whether the streets south of that lot conform to the line of it.

A. I believe they do.

Exhibit B. being shown witness, he is asked,

Q. Whether the old line of division of the District of Kensington and of Richmond runs parallel to lines of lot No. 8?

A. My impression was they did not, and my present impression is they do not; not exactly, one or two degrees different, I think.

Q. How long have you exercised the duties of Surveyor?

A. Nineteen years, nearly twenty.

Q. You are perfectly familiar with the lines of streets in the locality of which you have spoken?

A. I am, sir.

Cross-examined.

Q. Have you ever made any actual survey to ascertain the correspondence between the courses of the lines of the Ball partition and the streets?

A. I may say yes, off and on for the last twenty years, just as occasion requires. I have compared the plan of the city with that partition.

Q. What is the southern limit of Ball's estate?

A. Gunner's Run.

Q. Are you prepared to say that all the streets between Gunner's Run and the northward boundary of No. 7 and 8 on the partition correspond and are on the same courses, as the dividing lines of the purparts 7 and 8 inclusive?

A. Yes, sir, very nearly. That's a fact which can be ascer-

tained by a comparison of the plans. The streets above the northward boundary of No. 7 and 8, on the partition, correspond with the lines of the Ball partition, but as there is an angle in Richmond street, the lines which are at right angles to Richmond street, if projected, would interfere.

Re-examined.

All the streets north of Cumberland street, and south of William to the eastward of Richmond street, have been vacated.

(Signed) JAMES P. DAVIS.

Sworn and subscribed before me, this 7th day of February, A. D. 1866.

CHARLES H. T. COLLIS,
Examiner.

Defendant here closes his testimony.

Adjourned until February 13th, 1866, at 1 o'clock, P. M.

WEDNESDAY, MARCH 14, 1866.

Present—Messrs. SELLERS, GOWEN, and EXAMINER.

RICHARD B. OSBORNE, a witness on behalf of plaintiffs, being duly *sworn*, deposes and says: I am a civil engineer, and have been engaged in the practice of it for many years past. I was at one time chief engineer of the Philadelphia and Reading Railroad Company. I am not now in their employ—have not been for some years.

(Paper produced, marked plan O.)

I made that tracing—traced over the plan made by the City Surveyor, furnished by Strickland Kneass, Chief Engineer and Surveyor.

Q. Will you please state how a line running from the point of intersection of the southernmost boundary of the Philadelphia and Reading Railroad Company's land with the shore

line, and drawn at right angles to the present Warden's line, interferes with the extension of the northernmost line of Morris' property, produced to the Warden's line?

A. The right angular line from the southern boundary of the Reading Company and the shore line cuts the Warden's line fifty feet south of I. P. Morris' line produced. His line, drawn at right angles with the Warden's line, is shown on plan O, before referred to by the line marked A. I know that to be the fact. I have tested the lines on the ground, and know them to be correct. The existing Warden's line was approved by Ordinance of Councils, Dec. 4, 1856.

Previous to the establishment of this line, the piers then in existence were from No. 9 to 18 inclusive, (of the southern tier.) I believe the lines of No. 19 were established, but the pier itself was not finished. The southern line of No. 19 is parallel to the southern line of No. 18. The lines of all those southern piers are parallel.

Q. What is the distance between the southern line of No. 19 and the northern extremity of Morris wharf, as it existed in 1849?

A. Three hundred and fifty feet; that is, there would have been three hundred and fifty feet intervening between these two points on the Warden's line of 1849 if extended to pier No. 19.

Q. Assuming the establishment of the Warden's line of 1856, state how Mr. Morris' pier could be extended to the new line, so as to leave still the same distance between its northern extremity and the southern extremity of pier No. 19, extended to the new line.

A. If I. P. Morris & Co. were to extend from their end of the pier to the present Warden's line *at right angles*, it would yield the three hundred and fifty feet frontage up to the protracted line of pier No. 19.

Q. If pier No. 21 were extended to the Warden's line, and at right angles to it, and Morris' pier were extended in the same way, what would be the water-way between the two piers thus extended?

A. Ninety-two feet. I am quite familiar with this ground. It is a matter for the interest of the parties to say whether it would be objectionable to extend the piers in this way. There is one difficulty in it. The running of I. P. Morris' wharf out at right angles to this line would overlap the adjoining property south of it; that is, assuming that the property line is extended to the new Warden's line. There are no piers that I could see immediately south of Morris' pier that are extended beyond the old Warden's line. This plan, O, shows the piers south of Morris' pier. The first six of the southern tier of piers were built under my direction. They were built on lines which, as far as could be, were made at right angles to the old Warden's line. The course of the river at that point is substantially straight.

Cross-examined.

Q. Is it not a better wharf construction to have straight lines presented to the dock front, and is not every break of the straight line disadvantageous in some degree?

A. I think so.

(Signed) RICHARD OSBORNE.

Sworn and subscribed before me, this 14th day of March, A. D. 1866.

CHARLES H. T. COLLIS,
Examiner.

Plan, marked O, put in evidence by plaintiff.

Adjourned until Thursday, March 15, 1866, at 6 P. M.

THURSDAY, MARCH 15, 1866, 6 P. M.

Present—Messrs. GOWEN, SELLERS, and EXAMINER.

GEORGE RICE, a witness on behalf of the plaintiff, being duly *sworn*, deposes and says:

I am a civil engineer; am engineer in charge of Reading Railroad Company. I know the situation of the wharves of the coal piers of the Reading Railroad Company at Richmond.

[Plan marked "Philadelphia, April 19, 1864, by James P. Davis, City Surveyor, 6th District," shown witness.]

The line drawn at right angles from the point of intersection of the low water line and the southernmost boundary of the Company's property to the Warden's line and at right angles therewith, overlaps the northern line of Morris' pier, extended to the present Warden's line about fifty feet. The pencil lines on the plan are drawn by me.

Pier No. 19, as shown on this map, was built in 1856—about that time. It was just about built when I joined the Company in 1856.

Q. What is the width of the water way between pier No. 19 and Mr. Morris' pier, measured on the old Warden's line extended?

A. About 350 feet.

Q. How could that same width of way be maintained to the new Warden's line?

A. By extending both piers to the new Warden's line at right angles.

Q. What is the course of the river opposite the piers of the Company and of Mr. Morris?

A. Almost straight. There is something of a curve, but it is substantially straight.

Cross-examined.

Q. Do you consider it, as a matter of construction, that where the lines of the pier are not parallel, it is as good a piece of work as where they are?

A. There would be a loss of available water room on the southern dock of the Morris pier if extended at right angles to the new Warden's line. I would not consider it an objectional construction. The work can be satisfactorily done.

Q. Wouldn't there be a greater resistance to the southern line of that pier, in case of a rise and fall of tide, with an elbow in it than without it?

A. I don't think there would. Appreciably there would not be.

Re-examined.

The lines colored green on the plan I have referred to represent the property of the City, intervening between the property of the Reading Railroad and that of I. P. Morris & Co.

(Signed) GEO. RICE.

Sworn and subscribed before me, this 15th day of March,
A. D. 1866.

CHARLES H. T. COLLIS,
Examiner.